

ZIEGLER & SCHNEIDER, P.S.C.
ATTORNEYS AT LAW

DOCKET FILE COPY ORIGINAL

WILBERT L. ZIEGLER
DAVID A. SCHNEIDER
JOSEPH L. BAKER
WILLIAM J. DEUPREE, III
THOMAS C. SMITH
KAREN BURRIS BAKER
MICHAEL A. DUNCAN
LORI FIELDS-LEE
ROBERT C. ZIEGLER
LISA M. MOORE
SHARON SCHNEIDER ELLISTON
MICHAEL L. BAKER
DEBRA S. PLEATMAN

200 COVINGTON MUTUAL BUILDING
629 MADISON AVENUE
COVINGTON, KENTUCKY 41011
TELEPHONE (606) 581-4553
TELECOPIER (606) 581-0395

505 TURFWAY RIDGE OFFICE PARK
7300 TURFWAY ROAD
FLORENCE, KENTUCKY 41042
TELEPHONE (606) 525-7797
TELECOPIER (606) 525-7244

GREGORY W. HUGHES
1898-1958
ANDREW W. CLARK
1914-1967
D. COLLINS LEE
1888-1949
T.J. BRANDT
1948-1994

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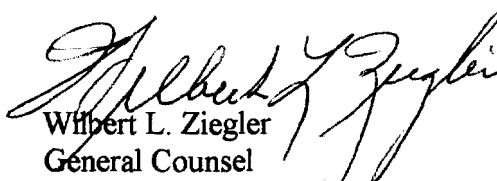
Office of Secretary
Federal Communications Commission
Washington, D. C. 20554

RE: MM Docket Number 97-182

Dear Sir:

Enclosed please find an original and nine copies of the comments being submitted in the foregoing matter pertaining to the preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities, being filed with the Kenton County Airport Board, operator of the Cincinnati/Northern Kentucky International Airport.

Very truly yours,


Wilbert L. Ziegler
General Counsel
Kenton County Airport Board

WLZ:kr

Enclosures

049
10/29/97

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D. C. 20554

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MAIL ROOM

In the Matter of

Preemption of State and Local Zoning and
Land Use Restrictions on the Siting,
Placement and Construction of Broadcast
Station Transmission Facilities

MM Docket No. 97-182

**COMMENTS OF KENTON COUNTY AIRPORT BOARD
TO PROPOSED RULE MAKING**

I. Introduction

1. The Kenton County Airport Board ("KCAB") is a public, governmental and corporate body politic created pursuant to Chapter 183 of the Kentucky Revised Statutes and operates the Cincinnati/Northern Kentucky International Airport ("Airport") located in Boone County, Kentucky. The Airport serves the tri-state area of Southeast Indiana, Southwest Ohio (which includes Cincinnati) and Northern Kentucky. The KCAB has no zoning authority outside of its physical boundaries and can exercise no control over radio or television towers or similar facilities located out of the Airport's boundaries. Zoning authority regulating the height of structures around the Airport for purposes of protecting the air traveling public is vested, in Kentucky, with the Kentucky Airport Zoning Commission established under the provisions of KRS 183.861 and has such jurisdiction applicable throughout the Commonwealth of Kentucky. The Federal Aviation Administration is charged with the responsibility of providing for the safety of the air traveling public but has no authority to control the lighting, painting or marking of towers or other structures or to prevent the construction of towers or other structures located off of the Airport property which may intrude into the airspace around an airport and adversely affect the safety of the flying public. The control of such airspace outside the boundaries of the Airport for the safety of the traveling public is left to state or local authorities and, particularly, in the Commonwealth of Kentucky, to the Kentucky Airport Zoning Commission.

II. Comments

2. The Federal Communications Commission should not preempt state and local laws, regulations and other restrictions regulating the location, height, painting and marking of towers which encroach into the navigable airspace around airports. The importance of regulation of the location, height, painting and marking of towers which intrude into the navigable airspace is obvious and will not be belabored here. The regulation and control of such intruding towers is best left to state and local authorities which have developed an expertise in considering and dealing with the safety issues involved in such matter. The regulation of towers intruding into the navigable airspace and the permit application procedures normally required as applicable require a knowledgeable and careful analysis of the safety considerations which the intruding tower invokes. These matters are best left to the state and local agencies to consider and finally determine rather than involving the Federal Communications Commission at all. In summary, state and local zoning and land use laws and regulations concerned with structures which intrude into the navigable airspace should not be preempted.

3. Section (b)(2) of the Petitioner's Proposed Preemption Rule preempts any state or local land use, building, or similar law, rule or regulation impairing the ability to construct towers unless such regulation is related to a safety objective and is reasonable in relation to the Federal interests in public broadcasting and competition. We submit that the interest in the Federal government in preserving the safety of persons traveling in navigable airspace is of such a primary consideration that regulations to ensure such safety should take precedence over public broadcasting and competition and therefore a general exemption for regulations of towers intruding into navigable airspace should be included in any regulation promulgated by the Federal Communications Commission rather than requiring the procedures and proof set forth in Section (b)(2) of Petitioner's Proposed Preemption Rule.

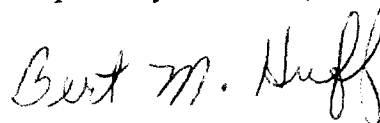
4. To the extent that the Federal Communications Commission may determine to adopt a Preemption Rule which subjects state and local zoning authorities concerned with regulating and controlling the intrusion of towers into navigable airspace, the time frames provided in Section (a) of Petitioner's Proposed Preemption Rule are not adequate. In determining the safety ramifications of a particular facility in relation to navigable airspace, no general rule is possible. Each individual intrusion into the navigable airspace must be analyzed and reviewed by knowledgeable staff which coordinates its considerations with the Federal Aviation Administration. Modifications to intruding towers must be given the same careful consideration as a new tower notwithstanding the location or overall height may remain the same. The relocation of a tower 300 feet or less which intrudes in the navigable airspace can present serious safety matters. Any time frame less than ninety days from the time that a properly completed application is submitted by a broadcaster is insufficient to allow the proper authorities to study and make a determination as to the safety of such a tower. Illustrative of the procedures utilized by state and local zoning authorities in the

regulation of structures intruding into navigable airspace are the regulations of the Kentucky Airport Zoning Commission which are attached hereto for information purposes.

5. There has not been overall interference by state and local bodies in the installation of towers generally and there is no urgency throughout the country requiring extensive preemption. Preemption, if considered by the Federal Communications Commission at all, should be limited to digital T.V. and then only to the top ten markets.

In summary, on behalf of the KCAB, we request that state and local regulations and procedures applicable to structures intruding into a navigable airspace not be preempted; that the regulation and determination of such matters be left to state and local authorities; and that, to the extent that time frames may be established within which these bodies must finally act, a minimum period of ninety days from the time that a properly completed application is submitted be allowed for final determination by the promulgating authority. Further, we request that if any preemption is undertaken it be limited to the area of digital T.V. and then only to the top ten markets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bert M. Huff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bert M. Huff, Chairman
Kenton County Airport Board

CHAPTER 50

AIRPORT ZONING COMMISSION

- 010: Definitions relating to 602 KAR Chapter 50.
- 030: Jurisdiction of the Kentucky Airport Zoning Commission.
- 040: Airport land uses.
- 050: Airport zoning map.
- 060: Construction within jurisdictional airspace.
- 070: Standards for determining obstructions.
- 090: Permit application procedures.
- 100: Standards for marking or lighting structures.
- 110: Valid permit period for alteration or construction of a structure.
- 115: Enforcement procedures; violations.
- 120: Reconsideration and administrative hearing procedures.

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.

RELATES TO: KRS 183.861 to 183.990, 14 CFR 91.119

STATUTORY AUTHORITY: KRS 183.011(15), 183.861

NECESSITY, FUNCTION, AND CONFORMITY: To define terms used in the administrative regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport Zoning Commission or any individual to whom he has delegated his authority in the matter concerned.

(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.

(3) "FAA" means the Federal Aviation Administration.

(4) "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Aeronautical and Zoning Terms. (1) "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of an airport and the safe and efficient utilization of the navigable airspace.

(2) "Aircraft" means as defined in KRS 183.011(2).

(3) "Airport" as defined in KRS 183.011(5).

(4) "Airport land use permit" means the approval by order of the commission of a request by a publicly-owned airport to change a use or activity within an airport to one which is otherwise prohibited by the administrative regulation of the commission.

(5) "Airport master plan", "airport layout plan" or "airport map" means the basic plan for the layout of an existing or proposed publicly-owned airport that shows at a minimum:

(a) The present boundaries of the airport and of the off-site area that the owner of a publicly-owned airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;

(b) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and

(c) The location of existing and proposed nonaviation areas, and of their existing improvements.

(6) "Airport reference point" means that point on an airport which is used to geographically locate the airport.

(7) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the administrative regulations of the commission.

(8) "Approach surface" means an imaginary surface at an airport longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(a) The inner edge of the approach surface shall be the same width as the primary surface and shall extend uniformly to a width of:

- 1. 1,250 feet for that end of a utility runway with only visual

approaches;

- 2. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

- 3. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

- 4. 1,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (3/4) of a statute mile;

- 5. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) statute mile; and

- 6. 16,000 feet for precision instrument runways.

(b) The approach surface shall extend for a horizontal distance of:

- 1. 5,000 feet at a slope of twenty (20) to one (1) for all utility and visual runways;

- 2. 10,000 feet at a slope of thirty-four (34) to one (1) for all nonprecision instrument runways other than utility; and

- 3. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.

(c) The outer width of an approach surface to an end of a runway shall be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(9) "Conical surface" means an imaginary surface at an airport extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.

(10) "En route obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off-airway route for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(11) "Established airport elevation" means the highest point on an airport's existing or planned runway expressed in feet above mean sea level.

(12) "Horizontal surface" means an imaginary horizontal plane at an airport 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc shall be:

- (a) 5,000 feet for all runways designated as utility or visual; or
- (b) 10,000 feet for all other runways.

(c) The radius of the arc specified for each end of a runway shall have the same arithmetical value which shall be the highest determined for either end of the runway. If a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(13) "Navigable airspace" means as defined in KRS 183.011(15) and air space at and above the minimum safe altitudes of flight and the air space necessary for normal landing or taking off of aircraft. Except where necessary for takeoff and landing, the minimum safe altitudes as defined in 14 CFR 91.119 are:

(a) Over any congested area of a city, town or settlement, or over any open air assembly of persons, an altitude of 1000 feet above the highest obstacle within a horizontal radius of 2000 feet of the aircraft;

(b) Over other than congested areas, an altitude of 500 feet above the surface except over open water or sparsely populated areas; or

(c) Over open water or sparsely populated areas, an altitude of 500 feet above any person, vessel, vehicle or structure.

(14) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its administrative regulations.

(15) "Primary surface" means an imaginary surface longitudinally centered on a runway. If the runway has a specially prepared hard surface, the primary surface shall extend 200 feet beyond each end of that runway. If the runway does not have a specially prepared hard surface, or planned hard surface, the primary surface shall end at each end of that runway. The elevation of any point on the primary surface shall be the same as the elevation of the nearest point on the

runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:

- (a) 250 feet for a utility runway having only visual approaches;
- (b) 500 feet for a utility runway having nonprecision instrument approaches; or
- (c) For other than a utility runway the width shall be:
 - 1. 500 feet for a visual runway having only visual approaches;
 - 2. 500 feet for a nonprecision instrument runway having visibility minimums greater than three-fourths (3/4) statute mile; or
 - 3. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile, and for a precision instrument runway.

(16) "Publicly-owned airport" means an airport that is open to the general public without prior request to use the airport and which is owned by a public agency, governmental body, airport board, or quasi-governmental body.

(17) "Publicly-owned airport imaginary surfaces" means the air space around an airport necessary for the safe landing and taking off of aircraft. The size of each imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end. The types of imaginary surfaces are defined in this section.

(18) "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map, airport master plan or Federal Aviation Administration (FAA) form 7480-1, Notice of Landing Area Proposal. The types of runways and their approaches for airport zoning purposes are:

(a) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document.

(b) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), microwave landing system (MLS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan or any other FAA planning document.

(c) "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

(d) "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.

(e) "Other than utility runway" means a runway that is constructed for and intended to be used by aircraft with a maximum gross weight both above and below 12,500 pounds. The aircraft may be propeller-driven, turbo-propelled, or jet-propelled.

(19) "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(20) "Transitional surface" means the imaginary surface at an airport which extends outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and

at right angles to the runway centerline. (KAV-8-1; 1 Ky.R. 806; eff. 5-14-75; Am. 2 Ky.R. 14; eff. 9-10-75; 304; eff. 3-10-76; 5 Ky.R. 597; eff. 3-7-79; 10 Ky.R. 442; 768; eff. 1-4-84; 14 Ky.R. 265; eff. 9-10-87; 19 Ky.R. 796; 1077; eff. 11-4-92; 20 Ky.R. 148; eff. 9-3-93; 23 Ky.R. 4214; eff. 8-11-97.)

602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.

RELATES TO: KRS 183.861, 183.865, 183.867, 183.870

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: To define the areas over which the Kentucky Airport Zoning Commission has jurisdiction for the purpose of zoning in accordance with KRS Chapter 183. To specify when the owner or person who has control over a structure which encroaches on the jurisdiction of the Kentucky Airport Zoning Commission shall apply for a permit.

Section 1. The commission has zoning jurisdiction over that airspace over and around the publicly-owned airports within the Commonwealth which lies above the imaginary surface that extends outward and upward at one (1) of the following slopes:

(1) 100 to one (1) for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each publicly-owned airport with at least one (1) runway 3,200 feet or more in length; or

(2) Fifty (50) to one (1) for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each publicly-owned airport with its longest runway less than 3,200 feet in actual length.

Section 2. The commission has zoning jurisdiction over the use of land and structures within publicly-owned airports within the state.

Section 3. The commission has jurisdiction from the ground upward within the limits of the primary and approach surfaces of each publicly-owned airport as depicted on Airport Zoning Maps approved by the Kentucky Airport Zoning Commission.

Section 4. The commission has jurisdiction over the airspace of the Commonwealth that exceeds 200 feet in height above ground level.

Section 5. The owner or person who has control over a structure which penetrates or will penetrate the airspace over which the commission has jurisdiction shall apply for a permit from the commission in accordance with 602 KAR 50:090. (KAV-9-1; 1 Ky.R. 807; eff. 5-14-75; Am. 2 Ky.R. 306; eff. 3-10-76; 5 Ky.R. 599; eff. 3-7-79; 10 Ky.R. 445; eff. 1-4-84; 14 Ky.R. 267; eff. 9-10-87; 19 Ky.R. 800; eff. 11-4-92.)

602 KAR 50:040. Airport land uses.

RELATES TO: KRS 183.865

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: To regulate the use of land within airports of the Commonwealth within the jurisdiction and function of the commission.

Section 1. Notwithstanding the provisions of any ordinance of a city or county legislative body pursuant to the authority of KRS Chapters 100 or 147, the following uses shall be allowed on the land within an airport: runways; taxiway, aircraft ramps; navigational aids and signals; safety equipment; aircraft terminals; cargo and service buildings; ramps; gates; hangars, aircraft sales, leasing, repair, and storage; automobile parking, garage and service facilities; motels and restaurants.

Section 2. Notwithstanding the provisions of any ordinance of a city or county legislative body pursuant to the authority of KRS Chapters 100 or 147, the commission may allow the following

TITLE 602, CHAPTER 50 - AIRPORT ZONING COMMISSION

additional uses, which do not constitute a hazard to air navigation: any commercial, industrial or residential use, including but not limited to governmental agencies and operation, banks and financial institutions, retail and wholesale stores, warehouses and storage facilities; manufacturing facilities and operations; offices and service facilities upon the issuance of an airport land use permit by order of the commission.

Section 3. Any activity or structure which lawfully existed before the adoption or amendment of the zoning administrative regulations of the commission, but does not conform to all of the administrative regulations which pertain to the use of land within public airports may continue as a nonconforming use, provided there is no alteration or change to the activity or structure which extends or enlarges the nonconformity.

Section 4. (1) A request for an airport land use permit shall be filed with the administrator and it shall state: the petitioner's name, address, and telephone number; the name of the public airport concerned; a description of the dimensions of any structure proposed to be erected; and a statement or reasons why the proposed use and structure will not constitute a hazard to air navigation.

(2) The petitioner shall annex to the request a copy of the airport zoning map for the airport concerned with the site of the proposed use or structure located thereon.

(3) The petition shall be considered at the next meeting of the commission and a copy of the commission's order, ruling or award shall be mailed to the petitioner. (KAV-16; 1 Ky.R. 1043; eff. 6-11-75; Am. 10 Ky.R. 445; eff. 1-4-84.)

602 KAR 50:050. Airport zoning map.

RELATES TO: KRS 183.867

STATUTORY AUTHORITY: KRS 183.861, 183.867(3)

NECESSITY, FUNCTION, AND CONFORMITY: To outline the procedure for the adoption of the airport zoning administrative regulations related to existing and planned publicly-owned airports under the jurisdiction of the commission, and to provide for the procedures for revising airport zoning maps.

Section 1. Every owner of an existing or planned publicly-owned airport in the state shall file with the administrator of the Kentucky Airport Zoning Commission a map showing the airport and the area surrounding the airport used for approach and landing purposes or the owner shall file an airport master plan.

Section 2. If an owner of a publicly-owned airport fails to file a map as provided under Section 1 of this administrative regulation, the administrator shall cause an appropriate map to be prepared showing the airport and the area surrounding the airport used for approach and landing purposes.

Section 3. The administrator shall designate the area of jurisdiction of the commission as set forth in 602 KAR 50:030 and the publicly-owned airport imaginary surfaces as set forth in Section 2 of 602 KAR 50:010 for each publicly-owned airport, on the map or airport master plan, prepared or filed under Sections 1 and 2 of this administrative regulation.

Section 4. The airport zoning map prepared pursuant to Section 3 of this administrative regulation shall be submitted to the commission for its adoption by order of the commission. If the airport zoning map is adopted by order of the commission, the date of its adoption shall be noted on the airport zoning map, and the original shall be kept in the office of the administrator pursuant to KRS 183.867(3) and the administrative regulations of the commission.

Section 5. (1) Every publicly-owned airport owner for which an airport zoning map has been adopted by the commission shall inform

the administrator of any changes in the existing or proposed boundaries, runways, or taxiways either by filing a revised airport zoning map or furnishing the administrator with information sufficient to cause a revised map to be prepared.

(2) The administrator shall designate the area of jurisdiction and airport imaginary surfaces on the revised map prepared or filed under subsection (1) of this section.

(3) The revised map prepared under this section shall constitute the airport zoning map for the publicly-owned airport upon its adoption by order of the commission and shall supersede any airport zoning map previously adopted by the commission.

Section 6. The administrator shall notify any local zoning body, whose jurisdiction is limited by the zoning jurisdiction of the commission, by sending to the local zoning bodies a copy of the airport zoning map adopted by order of the commission.

Section 7. The local zoning bodies may retain jurisdiction of zoning in these areas as to all other matters; however, the local zoning bodies shall not adopt any ordinances or regulations that conflict with the jurisdiction of the commission in areas as it pertains to the safe and proper use of the airport involved.

Section 8. Every airport zoning map adopted by the commission shall remain in full force and effect until revised pursuant to the administrative regulations of the commission. (KAV-10; 1 Ky.R. 1043; eff. 6-11-75; Am. 10 Ky.R. 446; eff. 1-4-84; 14 Ky.R. 268; eff. 9-10-87; 19 Ky.R. 801; eff. 11-4-92.)

602 KAR 50:060. Construction within jurisdictional airspace.

RELATES TO: KRS 183.861 to 183.890, 14 CFR Part 77

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.861 allows the Kentucky Airport Zoning Commission to regulate the use of land within and around all publicly-owned airports within Kentucky. This administrative regulation is promulgated to regulate the construction and alteration of structures in the airspace of the state over which the commission has jurisdiction in order to prevent an obstruction to the safety of air navigation. The federal regulation relating to this administrative regulation is applicable to all public-use airports. However, Kentucky state law allows the zoning protection to be afforded only to publicly-owned airports. Therefore, there are privately-owned, public use airports in Kentucky around which the airspace is not protected.

Section 1. Except as provided in 602 KAR 50:090, a person shall not construct or alter any structure which penetrates the airspace of the state over which the commission has jurisdiction as set forth in 602 KAR 50:030, unless the person who intends to construct or alter the structure obtains a permit from the commission in accordance with the procedures set forth in 602 KAR 50:090.

Section 2. The commission shall consider the provisions of 14 CFR Part 77 Sections 77.21 through 77.25, the aeronautical study performed by the administrator and any aeronautical study performed by the FAA as well as the factors set forth in KRS 183.868 and 183.870 in approving or disapproving an application for a permit submitted in accordance with the requirements of Section 1 of this administrative regulation.

Section 3. (1) Any change or transfer in the care, custody, control or ownership of a structure previously permitted by the commission shall require the original owner to notify the commission in writing of the name and address of the new owner on Kentucky Airport Zoning Commission/Transportation Cabinet form TC 56-50G "Notification of Change in Ownership" effective March 1997.

(2) The new owner shall comply with all conditions and requirements of the originally issued permit for the transferred structure unless properly amended by the commission.

Section 4. (1) A power line existing prior to January 4, 1984 for which a permit has not been issued may continue in its present configuration.

(2) A person proposing to alter or reconstruct any wire, transmission, distribution or other power line subsequent to September 1, 1983 that exceeds 200 feet above the ground level shall:

(a) Obtain a permit from the commission in accordance with 602 KAR 50:090; and

(b) Comply with the applicable marking and lighting requirements in accordance with 602 KAR 50:100.

Section 5. Material Incorporated by Reference. (1) Kentucky Airport Zoning Commission/Transportation Cabinet form TC 56-50G "Notification of Change in Ownership" effective March 1997 is incorporated by reference.

(2) A copy of Kentucky Airport Zoning Commission/Transportation Cabinet form "Notification of Change of Ownership" may be viewed, copied, or obtained from the Zoning Administrator, Division of Aeronautics, 125 Holmes Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. The telephone number is (502) 564-4480. The fax number is (502) 564-7953. (KAV-11; 13; 1 Ky.R. 807; eff. 5-14-75; Am. 10 Ky.R. 447; 770; eff. 1-4-84; 13 Ky.R. 293; eff. 9-4-86; 19 Ky.R. 802; eff. 11-4-92; 23 Ky.R. 4217; eff. 8-11-97.)

602 KAR 50:070. Standards for determining obstructions.

RELATES TO: KRS 183.868, 14 CFR Part 77

STATUTORY AUTHORITY: KRS 183.861, 183.868

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.861

allows the Kentucky Airport Zoning Commission to regulate the use of land within and around all publicly-owned airports within Kentucky. This administrative regulation is promulgated to establish standards for determining obstructions to air navigation. The federal regulations governing this administrative regulation are applicable to all public use airports. However, for Kentucky Airport Zoning purposes, KRS 183.861 only allows their applicability to publicly-owned airports. Therefore, there are privately-owned, public-use airports in Kentucky which are not protected by the Kentucky Airport Zoning Commission.

Section 1. Standards for Determining Obstructions. A permanent or temporary object shall be an obstruction to air navigation if it is of greater height than any of the following heights or penetrates any of the following surfaces:

(1) A height of more than 500 feet above ground level at the site of the object.

(2)(a) A height that is more than 200 feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of a publicly-owned airport, which has at least one (1) runway of more than 3,200 feet in actual length.

(b) Beyond three (3) nautical miles, that height increases in the proportion of 100 feet for each additional nautical mile of distance from the airport reference point up to a maximum of 500 feet.

(3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the permanent or temporary structure or object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(4) A height within an en route obstacle clearance area, including turn and termination areas, of a federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under 602 KAR 50:010, Section 2 including those identified in "U.S. Terminal Procedures, Southeast Volume 1 of 3".

Section 2. 14 CFR Part 77. (1) The Kentucky Airport Zoning Commission adopts 14 CFR Part 77, Sections 77.21 through 77.25;

Objects Affecting Navigable Airspace, as effective on April 1, 1997.

(2) 14 CFR Part 77, Sections 77.21 through 77.25 shall govern the determination of an obstruction to safe air navigation in any instance not specified in this administrative regulation.

Section 3. Incorporation by Reference. (1) The publication of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration "U.S. Terminal Procedures, Southeast Volume 1 of 3" effective April 1997 is incorporated by reference as a part of this administrative regulation.

(2) A copy of the "U.S. Terminal Procedures, Southeast Volume 1 of 3" is on file with the administrator and may be viewed or photocopied at his office on weekdays between 8 a.m. and 4:30 p.m. eastern time. The address is Transportation Cabinet, Division of Aeronautics, Kentucky Airport Zoning Commission, 125 Holmes Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4480. The fax number is (502) 564-7953.

(3) A copy of the material incorporated by reference may be obtained from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, NOAA, N/CG33, Distribution Branch, Riverdale, Maryland 20737. The telephone number is (301) 436-6993. (KAV-14; 1 Ky.R. 807; eff. 5-14-75; Am. 2 Ky.R. 307; eff. 3-10-76; 5 Ky.R. 599; eff. 3-7-79; 10 Ky.R. 447; 770; eff. 1-4-84; 19 Ky.R. 803; eff. 11-4-92; 23 Ky.R. 4218; eff. 8-11-97.)

602 KAR 50:090. Permit application procedures.

RELATES TO: KRS 183.869, 183.870, 183.871

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.861

allows the Kentucky Airport Zoning Commission to regulate the use of land within and around all publicly-owned airports within Kentucky. This administrative regulation is promulgated to outline the procedure that a person shall follow in order to obtain a permit or tentative approval to erect or alter a structure, and defines the authority of the Administrator of the Kentucky Airport Zoning Commission to reject or approve applications for permits and provide for the processing of an application for a permit.

Section 1. (1) Every person who is required by 602 KAR 50:030 to obtain a permit to construct or alter a structure shall send a signed and completed Form TC 56-50, "Application for Permit to Alter or Construct a Structure", revised effective January 1996, to the Administrator of the Kentucky Airport Zoning Commission, Division of Aeronautics, 125 Holmes Street, Frankfort, Kentucky 40622.

(2) Except as set forth in Section 3 of this administrative regulation, the application shall be submitted at least ninety (90) days prior to the date the proposed construction or alteration is scheduled to begin.

Section 2. (1) Upon receipt of the application, the administrator shall review the application to determine if all required information has been submitted.

(2) If the application is incomplete, the administrator shall:

- (a) Reject it;
- (b) Return it to the person who submitted it; and
- (c) Provide a statement of the additional information that is required for a complete application.

(3) If the application is complete, the administrator shall conduct an aeronautical study for the purpose of determining whether to recommend to the commission that a permit be issued.

(4) The preliminary recommendation of the administrator for approval or disapproval may be furnished to the applicant prior to consideration of the application by the commission.

(5) The commencement of any construction or erection of the structure prior to final consideration by the commission and the issuance of a permit shall be at the sole risk of the applicant.

(6) The Commission, its members and its administrator shall not be responsible or liable in any manner for any work performed prior

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to the issuance of a permit.

Section 3. (1) If approval for a temporary structure is being sought, the applicant shall furnish to the administrator an affidavit or sworn statement detailing the conditions and reasons for the extraordinary measures being requested or provide any other information requested by the administrator.

(2) The administrator may approve an application for a temporary structure that will be in existence for a short duration if it will no longer occupy the same airspace at the time a formal application can be considered by the commission.

(3) This approval shall not be granted if it is evident that the proposed temporary structure will adversely affect the safety of air navigation.

Section 4. (1) The administrator shall submit the application, the results of his aeronautical study and his recommendation for commission action to the commission at its next meeting.

(2) At least twenty (20) days prior to the commission meeting at which the application is to be considered, the administrator shall circulate a copy of the application and the conclusions of his aeronautical study to any interested parties, including local airport boards, municipal and county governments' officials, airport owners and operators.

(3)(a) An interested party shall be permitted to file with the commission written objections to or remarks about the application.

(b) The objections or remarks shall be filed with the commission not later than the date for filing established in the circulated copy of the application.

(c) The date by which the objections or remarks shall be received by the administrator shall provide all interested parties with at least eighteen (18) days from the date the administrator mailed the notice by first class mail.

Section 5. (1) The application normally shall be considered at the first meeting of the commission after the expiration of the established period in which an interested party could file an objection to or remarks about the application.

(2) A copy of the commission's decision shall be mailed to the applicant and any other interested parties who filed an objection to or remarks about the application.

Section 6. (1) If tentative approval of a permanent structure is being sought, the applicant shall furnish to the administrator an affidavit or sworn statement detailing the conditions and reasons for the extraordinary measures being requested or provide any other information requested by the commission or its administrator.

(2) The commission may grant tentative approval of an application if:

(a) The time for filing an objection to the application has not expired, but it appears to the commission that an objection will not be filed; and

(b) It appears to the commission that the proposed structure will not adversely affect the safety of air navigation; or

(c) Other special conditions imposed in the permit have been met.

(3) The commencement of any construction or erection of the proposed structure based on the issuance of tentative approval by the commission prior to the issuance of a permit shall be at the sole risk of the applicant.

(4) The commission, its members, and its administrator shall not be responsible or liable in any manner for any work performed prior to the issuance of a permit.

Section 7. Material Incorporated by Reference. (1) Transportation Cabinet Form TC 56-50, "Application for Permit to Alter or Construct a Structure", revised effective January 1996 is incorporated by reference.

(2) A copy of Transportation Cabinet Form TC 56-50 may be viewed, copied, or obtained from the Zoning Administrator, Division of Aeronautics, 125 Holmes Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. The telephone

number is (502) 564-4480. The fax number is (502) 564-7953. (KAV-12; 1 Ky.R. 1044; eff. 6-11-75; Am. 10 Ky.R. 448; 771; eff. 1-4-84; 13 Ky.R. 294; eff. 9-4-86; 19 Ky.R. 804; eff. 11-4-92; 23 Ky.R. 4220; 24 Ky.R. 339; eff. 8-11-97.)

602 KAR 50:100. Standards for marking or lighting structures.

RELATES TO: KRS 183.861 to 183.990, 14 CFR Part 77

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.861

allows the Kentucky Airport Zoning Commission to regulate the use of land within and around all publicly-owned airports within Kentucky. This administrative regulation is promulgated to describe the standards for the marking or lighting of structures which penetrate the airspace under the jurisdiction of the Kentucky Airport Zoning Commission. The federal regulations relating to this administrative regulation are applicable to all public use airports. However, for Kentucky Airport Zoning purposes, KRS 183.861 only allows their applicability to publicly-owned airports. Therefore, there are privately-owned, public-use airports in Kentucky which are not protected by the Kentucky Airport Zoning Commission.

Section 1. The Advisory Circular No. AC 70/7460-1J, Obstruction Marking and Lighting, issued by the Federal Aviation Administration effective January 1, 1996 shall govern the marking and lighting of structures which:

(1) Penetrate the jurisdictional airspace of the commission; or

(2) Have been determined by the commission to be an obstruction to safe air navigation.

Section 2. A person who is issued a permit to alter or construct a structure shall mark or light the structure in accordance with the applicable standards of the Federal Aviation Advisory Circular, "Obstruction Marking and Lighting", unless the commission determines that the absence of the marking or lighting will not impair the safety of air navigation.

Section 3. Any structure that exceeds 200 feet above ground level shall be obstruction marked or lighted in accordance with the standards of the Federal Aviation Advisory Circular, "Obstruction Marking and Lighting", unless the commission determines the absence of the marking or lighting will not impair the safety of air navigation.

Section 4. (1) A holder of a commission permit that requires obstruction marking and lighting as a condition for the approval of the application may request a change in that requirement to maintain or improve the system based upon technological advances.

(2) Before changes or alterations are made to the previously approved obstruction marking or lighting system, a request shall be:

(a) Made in writing; and

(b) Approved by the commission.

Section 5. If an existing, permitted and standing facility is abandoned, the permit holder shall continue to maintain obstruction marking or lighting which was required by the commission unless the facility is physically removed.

Section 6. During the construction or alteration of a structure, once any portion of the structure exceeds 200 feet above ground level, it shall be obstruction marked and lighted in accordance with the standards of the Federal Aviation Advisory Circular, "Obstruction Marking and Lighting", unless the commission determines the absence of this marking or lighting will not impair the safety of air navigation and so states when the permit is issued.

Section 7. (1) Advisory Circular No. AC 70/7460-1J, Obstruction Marking and Lighting, issued by the Federal Aviation Administration effective January 1, 1996 is incorporated by reference.

(2) Advisory Circular No. AC 70/7460-1J, Obstruction Marking and

Lighting may be viewed or copied from the Zoning Administrator, Division of Aeronautics, 125 Holmes Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. The telephone number is (502) 564-4480. The fax number is (502) 564-7953.

(3) Advisory Circular No. AC 70/7460-1J, Obstruction Marking and Lighting may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402-9328. (KAV-17; 1 Ky.R. 807; eff. 5-14-75; Am. 2 Ky.R. 16; eff. 9-10-75; 5 Ky.R. 599; eff. 3-7-79; 10 Ky.R. 449; 772; eff. 1-4-84; 12 Ky.R. 1632; eff. 5-6-86; 19 Ky.R. 805; eff. 11-4-92; 23 Ky.R. 4222; 24 Ky.R. 341; eff. 8-11-97.)

602 KAR 50:110. Valid permit period for alteration or construction of a structure.

RELATES TO: KRS 183.861 to 183.990

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: The commission finds it is necessary for the public interest that construction or alteration of a structure be commenced and completed within a reasonable period after the issuance of a permit; therefore, the function of this administrative regulation is to limit the period in which to commence and complete construction.

Section 1. If the construction or alteration of a structure is not completed within eighteen (18) months from the date of issuance of the permit, permit shall be void and no work shall be performed without the issuance of a new permit. The commission may grant a shorter or longer period of time to complete the construction or alteration of a structure when it issues a permit.

Section 2. All holders of an approved commission permit shall complete and return a construction or alteration project status report as soon as the structure reaches its greatest height. This report may be filed with the administrator any time during the eighteen (18) months allowed for completion of the construction or alteration of the structure.

Section 3. All commission permit holders shall send written notification to the Airport Zoning Commission administrator within thirty (30) days after the removal of a tall structure that was issued a permit from the commission. If a commission permit holder sells or transfers his facility, the existing commission permit shall transfer to the new owner provided the requirements of 602 KAR 50:060, Section 3, are met.

Section 4. The Kentucky Airport Zoning Administrator, upon written application and the showing of just cause, may extend the time allowed for completion of the construction or alteration of a structure for a period not to exceed an additional eighteen (18) months. (KAV-15; 1 Ky.R. 808; eff. 5-14-75; Am. 10 Ky.R. 450; eff. 1-4-84; 19 Ky.R. 806; eff. 11-4-92.)

602 KAR 50:115. Enforcement procedures; violations.

RELATES TO: KRS 183.861 to 183.990

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Airport Zoning Commission finds it necessary to establish administrative enforcement procedures whereby a person in violation of the statutes, administrative regulations, orders or permits of the commission may be given notice of the violation or show cause to the commission why he is not in violation as a means to minimize litigation.

Section 1. The commission delegates responsibility to determine apparent violations of its statutes, administrative regulations, orders and permits to its administrator. The administrator shall investigate

violations of the statutes, administrative regulations, orders and permits and mail a notice to the person who owns or controls the structure, land, etc., in violation thereof.

Section 2. The notice shall state the location, type of structure and the reasons the structure is in violation of the statutes, administrative regulations, orders or permits of the commission. The person shall be requested to correct the violation within thirty (30) days of the notice or show cause to the commission why compliance should not be enforced.

Section 3. The person to whom the notice is directed pursuant to this administrative regulation may show cause why enforcement should be withheld by filing a written petition for a hearing before the commission. The petition may be in the form of a letter. The petition shall be filed in person or by mail with the Administrator, Kentucky Airport Zoning Commission, Frankfort, Kentucky 40622. The petitioner shall state, if applicable, facts sufficient to show:

(1) The structure is not an obstruction in the zoned airspace of this state; or

(2) The structure is in the zoned airspace of this state, but it is not a hazard to the safety of air navigation; and

(3) Any other facts the petitioner deems relevant that would relieve him from the terms of the order, including a request for an extension of time to remove the structure.

(4) If the administrator does not receive a petition from a person to whom a notice has been mailed and finds that violation continued during the period allowed in the notice, then the administrator shall refer the matter to the commission for its action in order to determine the appropriate penalties and action for the said violation.

Section 4. If the administrator does not receive a petition from a person to whom a notice has been mailed and finds that the structure has not been removed during the period allowed in the notice, then the administrator shall refer the matter to the commission for its action.

Section 5. The administrator shall set the petition for a hearing to be conducted pursuant to 602 KAR 50:120.

Section 6. The commission may order an injunctive action be instituted in circuit court for the enforcement of applicable statutes, rules, administrative regulations, and orders issued pursuant to this administrative regulation. (2 Ky.R. 82; eff. 9-10-75; Am. 10 Ky.R. 450; eff. 1-4-84.)

602 KAR 50:120. Reconsideration and administrative hearing procedures.

RELATES TO: KRS 183.871

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: To provide for general procedures for a request for reconsideration and for the conduct of all hearings on any petition to the commission.

Section 1. Request for reconsideration of an action taken by the commission shall be as follows:

(1) A person who wishes to provide additional information, further explain the information previously presented to the commission, request reconsideration, or otherwise discuss a matter with the commission shall notify the administrator of his intention to attend a meeting of the commission.

(2) The notice shall be in writing and filed within thirty (30) days of the mailing of the document formalizing the commission's action to appropriate parties.

(3) The administrator shall place the issue on the agenda for the next commission meeting at which he is able to provide to all interested parties a ten (10) day written notice of the placement of the issue on the agenda of the commission.

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Section 2. Request for a hearing shall be accomplished as follows:

(1) A person aggrieved by an action taken by the commission with respect to any application for a permit, request for adoption of airport zoning map, notice of violation, or any orders or rulings issued pursuant to the commission's administrative regulations may petition the commission in writing for an administrative hearing.

(2) The petition, which may be in the form of a letter, shall identify the action taken by the commission for which a hearing is sought and it shall state specifically the grounds for the request in addition to a statement of the relief desired.

(3) The petition shall be filed within thirty (30) days of the mailing of the document formalizing the commission's action to appropriate parties or if the person requested the opportunity to appear before the commission, within thirty (30) days of the action taken by the commission after the petitioner's appearance before the commission. The document may be executed by either the administrator or the chairman of the commission.

(4) Once a petition for a hearing is received, the administrator shall notify all other interested parties of the receipt of the petition for a hearing. Other interested parties may include but shall not be limited to the applicant, local zoning body, local air board, airport owner and other identifiable person or persons who exhibit an interest in the commission's decision.

(5) The administrator shall request the Transportation Cabinet's Office of General Counsel to assign a hearing officer. The hearing and subsequent actions shall conform to the requirements of KRS Chapter 13B.

Section 3. (1) If the commission deems it in the best interest of the public, it may require that a public discussion of an issue under consideration be conducted prior to taking any action on an application, permit, zoning map, or other item before the commission for consideration.

(2) The administrator shall, at least ten (10) days prior to the meeting, notify all interested parties of the date, time, and location of the commission meeting at which the public discussion will take place.

(3) An action rendered by the commission as a result of a public discussion conducted under this subsection shall constitute a final agency action from which an appeal may be taken pursuant to Section 2 of this administrative regulation. (1 Ky.R. 808; eff. 5-14-75; Am. 10 Ky.R. 451; 772; eff. 1-4-84; 14 Ky.R. 269; eff. 9-10-87; 19 Ky.R. 807; eff. 11-4-92; 23 Ky.R. 4224; 24 Ky.R. 341; eff. 8-11-97.)